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Federal Communications Commission
Office of the Secretary

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
New Rules and Policies Designed	)	RM - ________
to Foster Minority Ownership	)	
of Communications Facilities	)	

TO THE COMMISSION

PETITION FOR RULEMAKING OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS, THE NATIONAL HISPANIC MEDIA COALITION, AND THE NATIONAL BLACK MEDIA COALITION

The National Association for the Advancement of Colored People, the League of United Latin American Citizens, the National Hispanic Media Coalition, and the National Black Media Coalition ("Civil Rights Organizations"), pursuant to §1.401 of the Commission's Rules, respectfully petition for initiation of a rulemaking proceeding to consider eight new proposals designed to foster minority ownership in broadcasting.

INTEREST OF ORGANIZATIONS

The National Association for the Advancement of Colored People ("NAACP"), founded in 1909, is the oldest and (with 500,000 members) the largest civil rights organization in the United States. The basic aims of the NAACP are to advance minority participation in all aspects of society and to destroy all limitations or barriers based upon race or color. The NAACP has long been involved in strengthening the machinery for combatting discrimination within the media and in maintaining the policies aimed at remedying societal discrimination and promoting diversity of broadcast programming.

The League of United Latin American Citizens ("LULAC") is a sixty-year old national membership organization concerned with advancing the civil rights and promoting the educational, economic and social well being of Hispanic Americans in the United States. LULAC has actively promoted minority employment and ownership policies in the broadcast media before the FCC and the courts.

The National Hispanic Media Coalition ("NHMC"), founded in 1986, represents more than two dozen organizations striving to improve the image of and employment of Hispanics in the media. It regularly participates in FCC matters as an advocate for stronger policies favoring minority ownership and employment.

The National Black Media Coalition ("NBMC") is the principal civil rights organization focusing on minority employment and ownership in the broadcast media. Since its founding in 1973, NBMC has participated in dozens of adjudicatory and rulemaking proceedings to vindicate and expand the FCC's minority ownership policies.

BACKGROUND

The Supreme Court's decision in Metro Broadcasting, Inc. v. FCC 110 S.Ct. 2997 (1990) ("Metro") has presented the Commission with a dramatic opportunity to significantly redress the extreme underrepresentation of minorities in the ownership of mass media facilities.

Minority ownership currently stands at only 2% of commercial broadcast facilities.[1/] This represents far less than 1% of broadcast industry asset value, inasmuch as most minority owned stations are small. The 1990 Census is expected to show that minorities comprise approximately 23% of the U.S. Population, and that percentage will grow significantly in the coming decade.

There were approximately 60 minority owned commercial stations in 1978, and there are approximately 281 now, representing an increase of 18.4 stations per year.[2/] At this glacial pace, minorities would require 115 years just to attain parity in the number of facilities, and far longer to attain parity in asset value.[3/]

1/ National Telecommunications and Information Administration (NTIA), Compiliation by State of Minority Owned Commercial Broadcast Stations, July, 1990.

2/ Id. See also FCC Committee on Alternative Sources of Financing for Minority Ownership in Telecommunications, Report on Minority Ownership in Broadcasting 1 (1978).

3/ It is not necessary for the Commission to decide whether parity should be its goal. The broadcasting industry is so far away from parity that the argument is purely an academic one.

The Civil Rights Organizations are submitting eight modest minority ownership enhancment proposals.[4/] These proposals underwent study, review and revision by numerous communications specialists, lawyers and policymakers over a three year period. They are consistent with the Commission's time tested regulatory structure. They will implicate no constitutional concerns, and they will provide direct benefits to the public by greatly enhancing opportunities for minorities to enter the industry as owners.

We ask that the Commission examine these proposals with an eye toward flexibility and creativity. The purpose of these proposals is only to restart the debate which has been frozen during five years of litigation of Metro and related decisions. All we seek is an order calling for public comment, including a statement identifying the type of documentation which would be helpful to the Commission in considering these and related policy issues.

We respectfully request that the Commission not place these proposals on the shelf,[5/] but that it immediately put them out for public comment, bearing in mind the high priority it has attached to opportunities for minority ownership.

4/ On September 14, the Civil Rights Organizations filed Comments in the comparative hearing proceeding, MM Docket No. 90-264. The Comments of NAACP, LULAC and NBMC on settlements of comparative hearing cases were also filed September 14 in MM Docket No. 90-263.

5/ See National Black Media Coalition, 61 FCC2d 1112 (1976) (NBMC's 30 point rulemaking petition was filed November 12, 1973. It took nearly three years (August 19, 1976) for the Commission to issue its decision. The decision summarily denied all 30 proposals, issuing none of them for public comment.)

RULEMAKING PROPOSALS

1. **POLICY REVIEW PROCEDURES**

The Commission should establish goals for minority media ownership. In particular, it should conduct a continuing review of its policies and procedures with the goal of assuring a substantial annual increase in the number of minority owned broadcast facilities.

Twelve years ago, the Commission articulated the regulatory rationale for the policies -- fostering diversification of voices by fostering diversification of ownership. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC2d 979, 983 (1978) ("1978 Policy Statement"). However, it is fundamental that the Commission articulate -- in concrete terms -- what it desires to achieve through its minority ownership policies.

It should not undertake this task without the assistance of concerned specialists. In particular, the Commission should establish a structure to make use of professional expertise in this area just as it has in such areas as radio, DBS, emergency broadcasting, and WARC preparations.

This vehicle should be a Minority Advisory Committee. Its functions would be to advise the Commission on means necessary to achieve its minority ownership goals. In addition, the Committee would advise the Commission on means to improve the effectiveness of EEO enforcement. The Committee would advise the Commission on new initiatives, but it must not be a dumping ground for minority issues. To insure that the Committee is treated as a high priority endeavor, the Commissioners, or members of their staffs, should each be members.

Finally, the Commission should maintain systematic two-way communication with minority broadcast entrepreneurs. While minorities who already own stations are well represented before the FCC, the Commission's Minority Ownership Conference (scheduled for September 26-27, 1990) provides one of the few organized opportunities for dialogue between Commission officials and those minorities still seeking to become station owners.

The Commission is to be applauded for organizing the Conference. It should make the conference an annual event.

2. FCC/IRS WORKING GROUP ON MINORITY OWNERSHIP

The tax certificate policy has been the principal engine driving the growth in minority broadcast station ownership. See Krasnow, Kennard and Crawford, Maximizing the Benefits of Tax Certificates in Telecommunications Ventures (1988) at 14-15.

In some respects, the tax certificate policy can be strengthened by the Commission on its own motion (those improvements are described below in items 3 and 4). However, some improvements in the tax certificate policy might require consultation with the IRS since they could require either an IRS Revenue Ruling or a legislative modification to Section 1071 of the Code, 26 U.S.C. §1071.

Matters which hold promise for expanding the value of tax certificates for minority ownership, but require FCC/IRS consultation, include the following.

a. Liberalizing the definition of comparable property for reinvestment.

The value of a tax certificate is enhanced to the extent that sellers are easily able to locate and acquire qualified replacement property. Because of the two year limitation on reinvestment proceeds, many sellers are interested in having the option of purchasing publicly traded communciations stocks for this purpose. Such purchases can be made with a very short lead time, and are often appropriate for fairly short term (two year) investments.

Unfortunately, a 1966 Revenue Ruling provides that such stocks qualify as replacement property only if the company issuing the stock holds FCC licenses directly. Rev. Rul. 66-33, 1966-1. Companies which hold FCC licenses through wholly owned subsidiaries do not qualify. This limitation greatly diminishes the attractiveness of tax certificates, since only a handful of public companies hold broadcast licenses directly.

A useful modification of the policy would be for companies to be deemed qualified for reinvestment of capital gains as long as (a) the companies are substantially engaged in mass media or telecommunications businesses regulated by the FCC; and (b) the companies either hold FCC licenses directly or have majority control over subsidiary corporations that hold FCC licenses.

The IRS also interprets Section 1033 of the Code (which defines involuntary conversions) as disallowing Section 1071 reinvestment in nearly all general or limited partnerships. The Commission favors such partnerships as a means to expand opportunities for broadcast ownership. Limited partnerships are commonly used by minorities to finance entry. See Minority Ownership in Broadcasting, 92 FCC2d 849, 855 (1982) ("1982 Policy Statement"). They are particularly valuable for investors seeking to take advantage of the capitalizing feature of tax certificates. It would be beneficial if the IRS could be persuaded to allow tax certificates where the reinvestment is in partnerships in which (a) the partnerships are primarily engaged in mass media or telecommunications businesses regulated by the FCC; and (b) the partnerships hold FCC licenses directly or have majority control over corporations or partnerships that hold FCC licenses.

b. Increasing the length of the deferral period.

The deferral period for capital gains in a tax certificate deal is only two years. The shortness of the period is at odds with Commission policy favoring long term ownership rather than quick sale or trafficking in broadcast interests. Cf. Transfer of Broadcast Facilities, 52 RR2d 1081 (1982), modified on recon., 99 FCC2d 971 (1985) (reinforcing need for permitees to hold licenses for one year).

Moreover, two years is so short a time that nearly all sellers who receive tax certificates reinvest only in publicly traded media stock, since it makes little business sense to invest in a closely held broadcast company for just two years. The brevity of the deferral period thus deprives all but some of the very largest broadcast companies of the reinvested gain.

Since no minority owned broadcast companies are publicly traded, the two year limitation also prevents reinvestment of the deferred gain in minority owned companies. The two year period should at least be doubled.

c. **Increasing the percentage of gain which can be deferred.**

The percentage of gain which can be deferred in a tax certificate transaction is limited to 100%. Increasing this to 200% could permit the deferral of gain in related transactions, such as simultaneous multiple spinoffs attendant to mergers in which minorities purchase major spinoff stations. Some of the most valuable minority owned properties have historically been those spun off from mergers of established, well run communications companies (ie. the 1979 Gannett/Combined Communications merger, which spawned the sale of WHEC-TV, Rochester, New York, to a minority company, and the 1986 CapCities/ABC Merger, which spawned, among others, the sale of WKBW-TV, Buffalo, New York, and WTNH-TV, Hartford, Connecticut, to minority companies.) Thus, additional incentives to facilitate such spinoffs would go a long way toward enabling minorities to own choice properties, such as large market television stations.

d. Allowing Tax Certificates for Three Party Transactions.

Tax certificates should be available to a company (the "lead party") which, while not able to sell a station to a minority, sells it to another nonminority station owner ("second party") on terms which enable the second party to use seller financing[6/] to effectuate a simultaneous sale of one of its stations to a minority.

Such three party transactions, whose effect is to bring in a minority who could not otherwise enter the industry, are rare because the lead party cannot presently receive any tax deferral from putting together such a deal. The availability of tax certificates to both the nonminority parties in this type of transaction would increase the use of tax certificates while simultaneously encouraging station sellers to provide seller financing for minority entry.

e. Facilitating basis shifting.

A group owner holding its stations as divisions of the same company can easily shift assets to or from properties sold to minorities. Using this procedure, it can reduce the basis of the station being sold to minorities, or increase its asset value, and thus maximize the value of a tax certificate in instances where other properties are being retained or sold to nonminorities. The result would be an additional incentive to sell a station to minorities.

6/ This provision is necessary to insure that the effect of this proposed liberalization of Section 1071 would not be to discourage minorities from buying the lead party's station.

However, this is difficult to do where a group owner holds its stations as separate subsidiaries, since the asset or basis shifting must often go through the parent before it can be passed on to another subsidiary. This poses the risk that the transferred assets or basis would be treated as dividends.

The Commission and IRS should explore means by which any group owner could routinely shift basis or assets among properties where the effect is to facilitate the sale of a property to minorities.

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To begin the process of liberalizing Section 1071, the Commission should invite the IRS to participate in a joint FCC/IRS Working Group on Minority Ownership. The Working Group could determine whether liberalization of Section 1071 can be effectuated through Revenue Rulings, through action by the Commission without the objection of IRS, or through legislation amending Section 1071. The Working Group could also explore the applicability of other tax incentives found in the Code to the furtherance of the Commission's minority ownership policies.

3. EXPANSION OF THE TAX CERTIFICATE POLICY TO ALL MASS COMMUNICATIONS MEDIA

The tax certificate policy should be expanded to include all current and potential media of mass communications, including wireless video distribution technologies (MMDS, ITFS, OFS and DBS) as well as firms in the telecommunications industry currently competing in, or seeking entry into the growing broadband video distribution or electronic publishing industries.

Furthermore, satellite owners should be eligible to receive tax certificates for the sale of transponders to minorities, and other favorable tax treatment (such as tax credits offsetting a portion of rental income) for the rental of transponders to minorities.

Wireless video distribution technologies compete with broadcasters and cablecasters for viewers despite differing regulatory classifications. The line distinguishing broadcasting from other media of communications is often blurred. See NAB v. FCC, 740 F.2d 1190 (D.C. Cir. 1984). Experience gained in one form of distribution system is often readily transferrable to others.

As wireless cable channels are bundled together, and we experience the development of broadband communications networks and enhanced services (whether owned by cable television or telephone companies), minorities face the prospect of a further diminished electronic voice. Increasingly, ownership is perceived as as the sine qua non of electronic speech. As recent mergers and acquisitions of major communications and telecommunications corporations make clear, there is likely to be no meaningful electronic voice without a very large capital base -- which minorities lack. Unless the Commission acts now to secure meaningful minority representation in the emerging technologies which will be used to reach mass audiences, minority viewpoints will diminish in the marketplace of ideas.

As the video distribution industries evolve, opportunities for purchase of ongoing distribution businesses will arise. At such times, the availability of a tax certificate may facilitate the sale of such businesses to aspiring minority entrepreneurs. Such a development would be a justified extension of the current policy which has allowed a number of minority owned entities to afford the purchase of broadcast and cable television facilities.

The use of tax certificates in new video technologies would also be consistent with the Congressional intent that firms competing to provide video and audio services to mass audiences each be treated the same way.

Finally, tax certificates in new video technologies would be consistent with the requirement that diversification of media control and viewpoints is prominent within the Commission's statutory mandate to regulate all media. NAB v. FCC, supra, 740 F.2d at 1206-8. Services technically deemed common carriers may nonetheless have the potential to disseminate new and varied views from broadcasters. Minority participation in such services is already a Commission priority. EEO Rules (Common Carriers), 24 FCC2d 725, clarified, 19 RR2d 1892 (1970). Such participation should be encouraged by, among other means, the grant of tax certificates.

4. ELIMINATION OF TAX CERTIFICATES FOR GRANDFATHERED MEDIA INTERESTS

When the Commission adopted a new multiple ownership policy for broadcast stations in 1970, it "grandfathered" stations with previously acquired holdings that otherwise would have contravened the multiple ownership policy. Multiple Ownership Policy, 22 FCC2d 306 (1970).

To encourage the divestiture of portions of local broadcast newspaper or TV-radio combinations, the Commission authorized tax certificates for groups that disposed of their grandfathered stations. Issuance of Tax Certificates, 19 RR2d 1831 (1970).

Tax certificates for divestiture of grandfathered media holdings are still available today. Yet whatever policy justification once existed for rewarding divestitures of grandfathered interests with a tax certificate has long since evaporated. The local media marketplace is far different now than it was in 1970. See One-to-A-Market Rule, 4 FCC Rcd 1741 (1989). Accordingly, the Commission has determined that many of the policies that were to be furthered by the one-to-a-market rule have already been realized, including the availability of media facilities, enhanced viewpoint diversity, and economic competition among broadcasters. It has held that "[i]n the past 18 years, the number of broadcast outlets at the local level has increased dramatically throughout different sized media markets -- large, medium, and small." Id. at 1743.

Accordingly, the Commission relaxed its one-to-a-market policy to consider the grant of waivers on a routine basis. Id. at 1751-54. Recognizing the growth of local media, the Commission found it reasonable to deregulate radio and television[7/] and to repeal the Fairness Doctrine.[8/]

7/ Deregulation of Radio, 84 FCC2d 968 (1981) and Deregulation of Television, 98 FCC2d 1076 (1984) (subsequent histories omitted).

8/ Syracuse Peace Council, 2 FCC Rcd 5043 (1987) (subsequent history omitted).

Furthermore, the Commission has now determined that in many instances, there are beneficial, diversity-promoting effects of multiple ownership, such as efficiencies from larger scales of operations, enhancement of nonentertainment programming, spillover benefits from mergers, and funds for improvements to existing facilities. Id. at 1747-1750. The Commission recognized and accommodated similar efficiences of common ownership in its decision in Duopoly Rules, 4 FCC Rcd 1723, 1727-28 (1989).

It is absolutely inconsistent for the Commission to find, on the one hand, that multiple ownership is beneficial, while simultaneously granting tax certificates for the breakup of multiple ownership combinations on the theory that multiple ownership is not beneficial.

Thus, there is no longer any policy justification for these grandfathered tax certificates. As the Commission has held, there is now a plethora of local voices. Unless such a divestiture resulted in an outlet for an entirely new type of voice, such as that of a minority owner, it is difficult to understand why a tax certificate should be granted for a grandfathered entity. Such a tax benefit now would only provide a windfall to the heirs of the founders of the large companies which already have a secure position in broadcasting -- with no benefit whatsoever flowing to the public as a result. This is bad broadcast policy and worse tax policy.

Moreover, stations in TV/AM/FM or newspaper/broadcast combinations are usually highly valued properties. Since most were purchased or constructed decades ago, they tend to have low tax bases. Thus, their owners are likely to seek tax certificates when selling the properties to lessen the tax consequences of such liquidations. Since such owners may now earn a tax certificate on any sale, they have little incentive to seek out minorities as buyers. Thus, to the Civil Rights Organizations' knowledge, minorities have never bought these stations when a grandfathered owner cashes out.

That is most unfortunate, because these stations are frequently the plums of the spectrum tree. One flaw in the Commission's minority ownership policies is that they have tended to result in the placement of inferior facilities (eg. Class A FMs in Docket 80-90; LPTV stations; poorly run facilities undergoing distress sales) in minority hands. Extending the competitive advantage of a minority ownership tax certificate certificate to the fruits of long established broadcast/newspaper or TV/radio combinations would do much to assist minorities in purchasing facilities with the engineering and economic strength to reach and competitively serve the entire marketplace.

Elimination of tax certificates for grandfathered stations would not cost the grandfathered owners a dime. They would still be able to receive tax certificates, but to do so they would need to sell to minorities. Retention of the tax certificate for grandfathered stations only dilutes the effectiveness of tax certificates for minority ownership as an instrument of Commission diversification policy.

The potentially expanded usefulness of tax certificates poses no equal protection concerns. The distress sale policy is presently the only means by which non-bankrupt broadcasters in hearing may cash out. Yet the Supreme Court, ruling in Metro, supra, 110 S.Ct. at 3026, rejected the assertion that "the distress sale policy imposes an undue burden on nonminorities."

Grandfathered tax certificates are no longer valid in today's media marketplace. Instead, the Commission's focus should be redirected to correcting the low level of minority ownership of broadcast facilities. Accordingly, the 1970 tax certificate decision, insofar as it has been applied to local grandfathered media, should be repealed.

5. USE OF DISTRESS SALES DURING HEARINGS

The Commission should modify its distress sale policy by allowing a distress sale at 50% of a station's fair market value during a renewal or revocation hearing.

Presently, the Commission allows licensees, while subject to revocation or noncomparative renewal hearings, to assign their stations to minority owned or minority controller buyers so long as the sale price for the station's facilities amounts to no more than 75% of the station's fair market value. See Grayson Enterprises, Inc., 77 FCC2d 156, 164 (1980).

Between 1978, when the distress sale policy was adopted, and 1989, 38 distress sales had been approved. While this is a small fraction of all broadcast station sales occurring during that time frame, some of these distress sales allowed minority entry into very large markets, such as Philadelphia (WDAS-AM-FM; see (Max M. Leon, Inc., 73 FCC2d 796 (1979)); Washington, D.C. (WOL-AM; see WOL, Inc., 79 FCC2d 547 (1980)); and Hartford, Connecticut (WHCT-TV; see Faith Center, 99 FCC2d 1164 (1984), aff'd, 3 FCC Rcd 868 (1988), aff'd sub nom. Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990)).

The distress sale policy has aided minority entry into the broadcast marketplace while simultaneously easing the burden on the Commission of presiding over the exit of licensees whose practices offended the public interest. See Metro, supra, 110 S.Ct. at 3027.

In 1981, the National Association of Black Owned Broadcasters ("NABOB") proposed an extension of the distress sale policy to apply it to instances where -- as often happens -- the licensee in hearing is slow to realize that its interests are best served by an exit for partial value rather than a forced revocation. NABOB's proposal contemplated sales at no more than 50% of a station's fair market value during hearing and at no more than 25% of a station's fair market value after hearing. Unfortunately, action on the NABOB proposal was delayed during the pendency of the Metro case, and ultimately the proposal was dismissed as stale.

Now that Metro has been decided, the Commission should adopt at least the first prong of NABOB's 1981 proposal. While it is hard to make a case for a distress sale after the Commission has already expended the time and energy necessary to conduct a hearing, such a sale (at further reduced value, such as 50%) would make sense at a time when the hearing has begun but not fully run its course.[9/]

6. RELIEF FROM MULTIPLE OWNERSHIP LIMITATIONS

Five years ago, when it adopted the 14-14-14 limitation for minority broadcast ownership, the Commission recognized that "our national multiple ownership rules may, in some circumstances, play a role in fostering minority ownership." Multiple Ownership Rules (Reconsideration), 100 FCC2d 74, 94-95 (1985) (history omitted). It is time for the Commission to partly relax the 12/12/12 rule, by increasing the minority limit to 14/20/20 stations.[10/]

The presence of a few strong minority companies in an industry helps spawn additional minority companies in that industry. It is indisputable that the structure of the broadcasting, film, broadcast production and cable television industries has contributed to the delivery of information and entertainment in a manner unparallelled elsewhere in the world.

9/ The flexibility offered in this proposal would in all likelihood increase the frequency with which broadcasters opt for distress sales. However, even if the effect of this proposal is to place only one new station in minority hands, the Commission should still adopt it, as that one station might provide a new voice in a major market.

10/ No increase is proposed for the television ownership limit, since group owners' TV audience reach is too close to 25% for many television broadcasters.

In each of these industries, a few large and very strong companies dominate. Nonetheless, they have spawned smaller companies, and robust competition is present in each industry.

Sizeable and successful minority companies also spawn other companies. In the publishing industry, for example, literally dozens of small entrepreneurs owe their start to the fact that John Johnson had a secure (and unregulated) economic base with Ebony and Jet magazines. Johnson's success meant that he could afford to train and do business with talented minorities who were otherwise unable to get their start elsewhere. See generally Johnson, Succeeding Against the Odds (1989).

Unlike the publishing industry or other unregulated industries, broadcasting industry regulations restrict the development of large minority owned firms. While three or four minority companies are presently poised to grow beyond 14 AM or FM stations in the next several years, they cannot do so because of the 14 station limitation in 47 CFR §73.3555. Thus, minority broadcast companies tend to be small, "mom and pop" outlets, restrained from offering optimal service to the public by artificial restrictions on their economies of scale.[11/]

11/ When it adopted the 12-12-12 rule, the Commission recognized that group ownership results in "economies of scale [which] may stem from the ability to spread the services of management, bookkeeping, secretarial, sales, and programming personnel over a number of stations, and the potential for group advertising sales and program purchases." It also recognized the public interest advantages of these economies of scale, noting that "group ownership can foster news gathering, editorializing and public affairs, programming, and the development in independent programming by regional or national ad hoc networks." Multiple Ownership Rules, 100 FCC2d 17, 44-45 (1984), recon. granted in part, 100 FCC2d 74 (1985).

In broadcasting, minority station owners are far more likely to hire minorities in responsible positions than are other broadcasters. Black station owners employ proportionally twice as many Blacks in management and professional capacities than do even those nonminority broadcasters who broadcast Black or urban formats.[12/]

The only explanation for this behavior is that minority broadcasters, recalling the role that other minorities played in their success, specifically desire to stimulate the development of the next generation of minority broadcasters.[13/] With discrimination still a factor in the marketplace, minorities are disadvantaged in being hired and minority investors find it difficult to pool capital. Thus, it would serve the public interest for Commission policies to foster the growth of companies which can be expected to assist other minorities' integration into the economic mainstream. Note, "Corporate Standing to Allege Race Discrimination in Civil Rights Actions," 69 Va. L. Rev. 1164, 1179 (1983).

12/ Honig, Relationships among EEO, Program Service and Minority Ownership in Broadcast Regulation, in Proceedings of the Tenth Annual Telecommunications Policy Research Conference 85 (1983).

13/ One need only follow the history of minorities in station ownership to appreciate what happens when minorities acquire stations previously owned by non-EEO sensitive nonminorities. Within a few years after WLBT-TV, Jackson, Mississippi, was acquired by the 40% minority owned nonprofit company Communications Improvement, Inc. in 1969, minority employment at the station went from one person (the janitor) to half the staff, including the first Black General Manager in television. Before Ragan Henry's acquisition of WWDB-FM in Philadelphia, the station had one Black employee; a year later, it had six, including two announcers. Clarence McKee's acquisition of WTVT-TV in Tampa was almost challenged by the NAACP because of the previous owner's poor EEO record; just a year later, the station had the best minority hiring profile of any Florida TV network affiliate. These are only a few examples; there is hardly a minority owner who cannot tell a similar story.

Minority owned companies are also active in assisting the financing of new minority entrants,[14/] as well as in training minorities to become owners.[15/] Thus, Commission policies facilitating capital acquisition by healthy minority firms will help spawn the creation of additional minority owned firms -- at the behest of minorities themselves.

There is no media concentration problem in the tiny minority owned sector of the broadcasting business. The problem, instead, is that so few minorities own any stations at all that it is hard to justify most restrictions on minorities owning additional ones.

The Commission has not hesitated to remove economic barriers to minority ownership where such barriers could not be justified by the realities of the business. See New Financial Qualifications Standards, 87 FCC2d 200, 201 (1981) (modifying the financial qualifications requirment of one year of operating capital adopted in Ultravision Broadcasting Co., 1 FCC2d 544 (1965), and substituting a more realistic three month requirement.) The Civil Rights Organizations' proposal will not radically alter the multiple ownership rules, but it will increase the number of minority owned stations and the strength of minority owned companies. The public can only benefit as a result.

14/ Inner City Broadcasting, Willis Broadcasting, Ragan Henry's companies, and Interurban Broadcasting are a few of the large minority companies which have helped finance potential minority station owners.

15/ Of the five companies providing training through NTIA's COMTRAIN program, three are are minority owned.

7. ENHANCED RENEWAL EXPECTANCY FOR INVESTORS IN MINORITY OWNED BROADCAST FACILITIES

The Commission should deem any broadcaster which has provided below market loans or equity up to a particular amount in minority broadcast station ownership, and which has demonstrated particularly strong EEO performance over at least two license renewal terms, to be presumed to have provided the public with "diversity enhancing meritorious service", entitling him or her to an especially strong renewal expectancy at license renewal time.

This diversity enhancing meritorious service credit would supplement rather than replace the credit presently awarded for meritorious service. It would enhance meritorious service in much the same way that minority ownership, local ownership, and broadcast experience credit enhance integration credit in a comparative hearing. See 1965 Policy Statement, 1 FCC2d 393 (1965).

Meritorious service credit is awarded in comparative hearings where a broadcaster has provided above-average service to the public. 1965 Policy Statement, supra, 1 FCC2d at 398. For determination of the credit, the Commission usually considers only past programming. See, eg., WPIX, Inc., 66 FCC2d 381, 400-406 (Rev. Bd. 1978).

Yet in recent years, other factors besides past programming have been recognized as indicia of public service. Solid EEO performance, for example, is seen as a good predictor of future service in the public interest. See NAACP v. FPC, 425 U.S. 662, 670 n. 7 (1976).

Similarly, responsible broadcasters who do not discriminate when the time comes to sell their stations receive tax benefits. 1978 Policy Statement, supra, 68 FCC2d at 983. They may also receive minority sensitivity credit in comparative hearings for providing programming opportunities to minorities. See TV 9, Inc. v. FCC, 495 F.2d 929, 938 (D.C. Cir. 1973). The Commission has also saluted broadcasters for forming MESBICs. See, eg., Storer Broadcasting Co., 70 FCC2d 709 (1979). The principal broadcast trade organization has sponsored a MESBIC (BROADCAP) which is financed entirely by the voluntary participation of public spirited broadcasters, large and small.

Kind words of commendation to broadcasters are no substitute for tangible rewards as a stimulus toward private sector efforts to foster minority entry. A broadcaster's public spirited efforts to benefit minorities are good predictors of future service in the public interest. That is what a comparative hearing is designed to determine. 1965 Policy Statement, supra, 1 FCC2d at 394. Thus, it is entirely appropriate that in such a compartive hearing, the stability of a broadcast license should be enhanced where the broadcaster has done its part to extend some of the fruits of its success to minorities seeking entry as employees and owners.

8. USE OF MINORITY VENDORS BY BROADCASTERS

Section 634(d)2(E) of the Cable Act, which requires cable companies to "encourage minority and female entrepreneurs to conduct business with all parts of its operation..." should be written into the broadcast rules.

The legislative history of this provision evidences Congress' "commitment to ensuring increased opportunities for women and minorities in all aspects of the telecommunications marketplace." H.R. Rep. 98-934, 98th Cong., 2d Sess., at 87 ("House Report"). This provision is also consistent with Congresional goals under Section 634 to adopt a strong EEO policy in order to insure that there are sufficient numbers of minorities and women with the professional and management level experience and the background and training necessary to "take advantage of existing and future cable system ownership opportunities." House Report at 86.

The same analysis is appropriate for the broadcasting industry. Encouraging broadcasters to conduct business with minority and female entrepreneurs would increase opportunities for these groups in all aspects of the broadcast business. Giving these entrepreneurs exposure to the business would increase the likelihood of their investment in broadcasting.

The burden on broadcasters resulting from this requirement woudl be very slight. They would be expected to: (1) survey their existing suppliers to determine whether they are in fact being served by minority and female suppliers and (2) make an effort to identify minority and female suppliers with whom they could do business. To ensure that efforts are being made to include minority and female entrepreneurs among vendors with whom they do business, broadcasters would be required to certify and describe their compliance on their Annual Employment Reports (Form 395).